

ENTERED

May 13, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JUAN JOSE POLANCO

VS.

WILLIAM STEPHENSON

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CIVIL ACTION NO. 7:15-CV-60

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND GRANTING DISMISSAL**

The Court has reviewed the magistrate judge's Report and Recommendation regarding Petitioner Juan Jose Polanco's action pursuant to 28 U.S.C. § 2254, and Petitioner's objections thereto. After having reviewed the said Report and Recommendation, and after appropriate review of Petitioner's Motion to Amend which the Court interprets as a response to the Report and Recommendation (Doc.#18), the Court is of the opinion that the conclusions in said Report and Recommendation should be adopted by this Court.

It is, therefore, **ORDERED, ADJUDGED** and **DECREED** that the conclusions in United States Magistrate Judge Peter E. Ormsby's Report and Recommendation entered as Docket Entry No. 14 are hereby adopted by this Court.

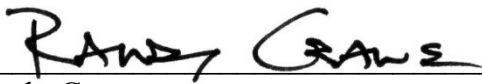
FURTHER, the Court, having adopted the magistrate judge's conclusions, is of the opinion that Respondent's Motion for Summary Judgment should be **GRANTED**, that a certificate of appealability should be **DENIED**, and that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 should be **DISMISSED**.

FURTHER, Petitioner has filed a "Motion to Amend Habeas Corpus 2254."

(Docket No. 18.) Petitioner filed his motion seeking to add new claims to a proposed amended § 2254 habeas petition. (*See id.*) Under Federal Rule of Civil Procedure 15(a)(2), applicable here, a party may amend his pleading only with leave of court. FED. R. CIV. P. 15(a)(2). The rule provides that the “court should freely give leave when justice so requires.” *Id.* Where the proposed amendment would be futile, however, denial of the motion for leave to amend is appropriate. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). “[T]he grant or denial of an opportunity to amend is within the discretion of the District Court.” *Id.* The Court DENIES petitioner leave to amend because the amendment is late and would unnecessarily delay this litigation and because the amendment is futile.

The Clerk shall send a copy of this Order to the Petitioner and counsel for Respondent.

SO ORDERED this 13th day of May, 2016, at McAllen, Texas.



Randy Crane
United States District Judge